

UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

EVAN AULD-SUSOTT, as Trustee for  
(1) IRREVOCABLE LIFE INSURANCE  
TRUST OF JOHN L. SUSOTT AND  
KATHRYN C. SUSOTT UAD 8/17/1988  
AS RESTATED, EXEMPT TRUST FBO  
DANIEL C. SUSOTT, and  
(2) IRREVOCABLE LIFE INSURANCE  
TRUST OF JOHN L. SUSOTT AND  
KATHRYN C. SUSOTT UAD 8/17/1988  
AS RESTATED, NON-EXEMPT TRUST  
FBO DANIEL C. SUSOTT; and  
JOHN L. SUSOTT,

Plaintiffs,

vs.

LAURYN GALINDO and DANIEL C.  
SUSOTT,

Defendants.

CIVIL 20-00270 LEK-RT

**ORDER DENYING DEFENDANTS' MOTIONS FOR RECONSIDERATION**

On July 26, 2023, this Court issued the Order:  
Granting Plaintiffs' Motion Seeking Dismissal and Summary  
Judgment; Denying Defendants' Motion for Summary Judgment; and  
Denying as Moot Defendants' Motion to Restore Ownership of the  
Apartment to Defendant Galindo ("7/26 Order"). [Dkt. no. 184.<sup>1</sup>]  
On July 27, 2023, the Court issued an entering order titled  
Court Order Denying as Moot Defendant Daniel Susott's Motion to  
Intervene of Right; or in the Alternative, Defendants' Motion

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<sup>1</sup> The 7/26 Order is also available at 2023 WL 4763240.

for His Joinder ("7/27 EO"). [Dkt. no. 185.] Before this Court are: Defendants Daniel C. Susott ("D. Susott") and Lauryn Galindo's ("Galindo" and collectively "Defendants") Motion for Reconsideration of this Court's Order Denying Their Motion for Summary Judgment, filed on August 8, 2023 ("Summary Judgment Motion for Reconsideration"); and Defendants' Motion for Reconsideration of this Court's Order Dismissing Defendant Daniel C. Susott or Alternatively, Not Reinstating Him, also filed on August 8, 2023 ("Dismissal Motion for Reconsideration" collectively "Motions for Reconsideration"). [Dkt. nos. 186, 187.] The Motions for Reconsideration are suitable for disposition without a hearing and without further briefing. See Local Rule LR7.1(d); Local Rule LR60.1. Defendants' Motions for Reconsideration are hereby denied for the reasons set forth below.

### **DISCUSSION**

The parties and this Court are familiar with the factual and procedural background of this case, and it need not be repeated here.

#### **I. Standards**

Because the 7/26 Order was case dispositive, Plaintiffs' Motion for Reconsideration is "governed by Fed. R. Civ. P. 59 or 60, as applicable." See Local Rule LR60.1. Because no judgment has been issued in this case, Fed. R. Civ.

P. 60 applies. See Fed. R. Civ. P. 59(e) ("A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment."). Rule 60(b) states, in pertinent part: "On motion and just terms, the court may relieve a party or its legal representative from a final . . . order, or proceeding for the following reasons: . . . or (6) any other reason that justifies relief." The Ninth Circuit has stated:

We use Rule 60(b)(6) "sparingly as an equitable remedy to prevent manifest injustice." United States v. Alpine Land & Reservoir Co., 984 F.2d 1047, 1049 (9th Cir. 1993). To receive relief under Rule 60(b)(6), a party must demonstrate "extraordinary circumstances which prevented or rendered him unable to prosecute [his case]." [Cnty. Dental Servs. v.] Tani, 282 F.3d [1164,] 1168 [(9th Cir. 2002)] (citing Martella v. Marine Cooks & Stewards Union, 448 F.2d 729, 730 (9th Cir. 1971) (per curiam)).

Lal v. California, 610 F.3d 518, 524 (9th Cir. 2010) (some alterations in Lal).

As to motions for reconsideration in general, this district court has stated:

A motion for reconsideration must:  
(1) demonstrate reasons that the court should reconsider its prior decision; and (2) must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision. Fisher v. Kealoha, 49 F. Supp. 3d 727, 734 (D. Haw. 2014). The Ninth Circuit has said that reconsideration may be appropriate if:  
(1) the district court is presented with newly discovered evidence; (2) the district court committed clear error or the initial decision was manifestly unjust; or (3) if there is an intervening change in controlling law. See Sch.

Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993).

Mere disagreement with a previous order is an insufficient basis for reconsideration. Fisher, 49 F. Supp. 3d at 735. This court “enjoys considerable discretion in granting or denying the motion.” Allstate Ins. Co. v. Herron, 634 F.3d 1101, 1111 (9th Cir. 2011) (quoting McDowell v. Calderon, 197 F.3d 1253, 1255 n.1 (9th Cir. 1999) (en banc)).

Smith v. Frink, Civil No. 20-00377 SOM-RT, 2020 WL 7130511, at \*2 (D. Hawai`i Dec. 4, 2020) (footnote omitted). Because the 7/27 EO is not a case-dispositive order, this Court applies the standard set forth in Local Rule 60.1, which is similar to the Ninth Circuit’s standard in School District No. 1J.

## **II. Request for Reconsideration of the 7/26 Order**

Relevant to the Motions for Reconsideration, the 7/26 Order addressed: Defendants’ Motion for Summary Judgment, filed on May 17, 2023; [dkt. no. 158;] and the Motion for [1] Dismissal Without Prejudice of Claims Against Defendant Daniel C. Susott; [2] Summary Judgment on Counts I and III of the Complaint Against Lauryn Galindo; and [3] Order Maintaining Status Quo and [4] Dismissing Count II Against Lauryn Galindo Without Prejudice If the Remainder of this Motion Is Granted that Plaintiffs Evan Auld-Susott, as Trustee for (1) Irrevocable Life Insurance Trust of John L. Susott and Kathryn C. Susott UAD 8/17/1988 as Restated, Exempt Trust FBO Daniel C. Susott, and (2) Irrevocable Life Insurance Trust of John L. Susott and

Kathryn C. Susott UAD 8/17/1988 as Restated, Non-Exempt Trust FBO Daniel C. Susott; and John L. Susott ("Plaintiffs") filed on May 21, 2023 ("Plaintiffs' Motion"), [dkt. no. 162]. See 7/26 Order, 2023 WL 4763240, at \*1.

**A. Dismissal of D. Susott**

In the 7/26 Order, this Court first granted Plaintiffs' request to dismiss their claims against D. Susott without prejudice, pursuant to Fed. R. Civ. P. 41(a)(2). See id. at \*2-3. Defendants argue that, before this Court addressed any portion of Plaintiffs' Motion, this Court should have ruled on the merits of Defendants' Motion for Summary Judgment, which was filed first. At a minimum, they contend this Court should have considered the two motions simultaneously as to the main issues. [Summary Judgment Motion for Reconsideration, Mem. in Supp. at 8.] Defendants rely upon Fair Housing Council of Riverside County, Inc. v. Riverside Two, in which the Ninth Circuit stated that, "when parties submit cross-motions for summary judgment, each motion must be considered on its own merits." 249 F.3d 1132, 1136 (9th Cir. 2001) (brackets, citations, and internal quotation marks omitted). The parties in the instant case, however, did not file cross-motions for summary judgment. It was within this Court's discretion to choose to address Plaintiffs' request to dismiss their claims against D. Susott before addressing the merits of Defendants'

Motion for Summary Judgment. See Dietz v. Bouldin, 579 U.S. 40, 47 (2016) (“district courts have the inherent authority to manage their dockets and courtrooms with a view toward the efficient and expedient resolution of cases” (citations omitted)).

Defendants also argue this Court should reconsider the dismissal of D. Susott because this Court did not consider whether he would be prejudiced by the dismissal. [Dismissal Motion for Summary Judgment, Mem. in Supp. at 8-9 (citing Westlands Water Dist. v. United States, 100 F.3d 94, 96 (9th Cir. 1996); Zanowick v. Baxter Healthcare Corp., 850 F.3d 1090, 1093 (9th Cir. 2017)).<sup>2</sup>] Although this Court did not expressly address the issue of prejudice, this Court considered the issue and ultimately concluded that, “under the circumstances of this case, the dismissal of Plaintiffs’ claims against D. Susott, without prejudice, is warranted.” 7/26 Order, 2023 WL 4763240, at \*3. D. Susott argues he will suffer plain legal prejudice as a result of the dismissal because he may be required to compensate Galindo for her loss of the apartment unit that he conveyed to her in 2019 (“the Property”). See Dismissal Motion for Reconsideration, Mem. in Supp. at 10. However, Galindo did

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<sup>2</sup> The case law Defendants cite from outside of the Ninth Circuit is neither binding nor persuasive. See Dismissal Motion for Reconsideration, Mem. in Supp. at 8-9 & n.2.

not plead any cross-claim against D. Susott in this case, she has not filed a separate action against D. Susott in this district court, nor is there any indication that she has filed an action against him in any other court. Even if Galindo later does file an action against D. Susott seeking reimbursement or other compensation for her loss of the Property, the rulings that this Court made regarding the claims between Plaintiffs and Galindo in this case would not have preclusive effect in that case between Galindo and D. Susott. See Auld-Susott v. Galindo, No. 21-17078, 2023 WL 2929317, at \*1-2 & n.1 (9th Cir. Apr. 13, 2023) (holding that this Court erred when it ruled that the rulings in the prior litigation between Plaintiffs and Galindo had a preclusive effect on D. Susott in this case). This Court therefore rejects Defendants' argument that Plaintiffs' claims against D. Susott should not have been dismissed because he would be prejudiced by the dismissal.

Defendants also argue this Court should reconsider the dismissal of Plaintiffs' claims against D. Susott because there is "actual or newly discovered facts or evidence that had not been available" when they filed their memorandum in opposition to Plaintiffs' Motion on June 6, 2023. See Dismissal Motion for Reconsideration, Mem. in Supp. at 9; see also Defendants' Memorandum in Opposition to Plaintiffs' Motion to Dismiss and for Summary Judgment, filed 6/6/23 (dkt. no. 168). It is not

clear what new facts or evidence Defendants are relying upon. To the extent that Defendants contend this Court's rulings in the 7/26 Order constitute facts that were not available on June 6, 2023, this Court rejects that argument because Plaintiffs' Motion requested the relief that was ultimately granted in the 7/26 Order. The prejudice D. Susott alleges he will suffer as the result of his dismissal could have been anticipated and addressed in Defendants' memorandum in opposition to Plaintiffs' Motion.

This Court also notes D. Susott previously asserted that there were new facts that were unavailable prior to the parties' deadline to amend their pleadings and that those new facts warranted granting him leave to assert counterclaims against Plaintiffs. See generally D. Susott's Motion for Leave to Amended His Answer to Assert Counterclaims, filed 6/28/23 (dkt. no. 178) ("Motion for Leave"). D. Susott's Motion for Leave was denied because his proposed counterclaims arising from the new facts were not compulsory counterclaims, and D. Susott could assert those claims in a separate action. See Minute Order, filed 7/6/23 (dkt. no. 180) ("7/6 EO") (informing the parties of the Court's inclinations regarding the Motion for Leave); Minute Order, filed 7/17/23 (dkt. no. 182), at PageID.2647 (finding that, for the reasons set forth in the 7/6 EO, justice did not require granting the Motion for Leave and



denying the motion). For the same reasons, this Court also finds that the asserted new facts described in D. Susott's Motion for Leave do not warrant reconsideration of the dismissal of Plaintiffs' claims against D. Susott.

To the extent the motions address the portion of the 7/26 Order dismissing Plaintiffs' claims against D. Susott, the Summary Judgment Motion for Reconsideration and the Dismissal Motion for Reconsideration are denied.

**B. Summary Judgment Against Galindo**

In the 7/26 Order, this Court granted summary judgment in favor of Plaintiffs and against Galindo as to Counts I and III, and then granted Plaintiffs' request to dismiss their claim against Galindo in Count II. 2023 WL 4763240, at \*3-7. In light of those rulings, this Court denied Defendants' Motion for Summary Judgment as moot. Id. at \*7. As previously noted, the parties did not file cross-motions for summary judgment, and it was within this Court's discretion to address the issues raised in Plaintiffs' Motion before addressing the issues raised in Defendants' Motion for Summary Judgment. However, the fact that this Court denied Defendants' Motion for Summary Judgment as moot does not mean that this Court disregarded either Defendants' Motion for Summary Judgment or the materials Defendants submitted in support of that motion. In granting summary judgment in favor of Plaintiffs as to Counts I and III,

this Court considered the record as a whole, in the light most favorable to Galindo as the nonmoving party. See 7/26 Order, 2023 WL 4763240, at \*5-6. The record as a whole included the evidence that Defendants submitted in connection with Defendants' Motion for Summary Judgment. This Court also considered the arguments that Defendants presented in connection with Defendants' Motion for Summary Judgment. Therefore, Defendants' Summary Judgment Motion for Reconsideration is denied as to their argument that this Court failed to consider Defendants' Motion for Summary Judgment.

All of Defendants' other arguments regarding the grant of summary judgment in favor of Plaintiffs and against Galindo merely express Defendants' disagreement with this Court's rulings, and their disagreement is not grounds for reconsideration. Defendants' Summary Judgment Motion for Reconsideration is denied as to their request for reconsideration of the portion of the 7/26 Order addressing Plaintiffs' claims against Galindo.

### **III. Request for Reconsideration of the 7/27 EO**

In the 7/27 EO, this Court denied D. Susott's Motion to Intervene of Right; or in the Alternative, Defendants' Motion for His Joinder, filed on July 25, 2023 ("Motion to Intervene"), [dkt. no. 183]. This Court denied the Motion to Intervene as moot because, in light of the rulings in the 7/26 Order, there

were no remaining claims against Galindo in which D. Susott could intervene or join.

This Court has denied Defendants' request for reconsideration of the dismissal Plaintiffs' claims against D. Susott and their request for reconsideration of this Court's rulings as to Plaintiffs' claims against Galindo. Thus, there are no remaining claims in this case, and there is no pending claim that D. Susott can intervene in or join. Defendants have not established that this Court made a manifest error of law or fact in the 7/27 EO. The Dismissal Motion for Reconsideration is therefore denied as to Defendants' request for reconsideration of the 7/27 EO.

#### **CONCLUSION**

For the foregoing reasons, Defendants' Motion for Reconsideration of this Court's Order Denying Their Motion for Summary Judgment, filed August 8, 2023, and Defendants' Motion for Reconsideration of this Court's Order Dismissing Defendant Daniel C. Susott or Alternatively, Not Reinstating Him, also filed August 8, 2023, are HEREBY DENIED.

There being no remaining claims in this case, the Clerk's Office is DIRECTED to enter judgment and close the case immediately. Judgment is to be entered in favor of Plaintiffs and against Galindo as to Counts I and III, pursuant to this Court's July 26, 2023 order. D. Susott is to be terminated as a

defendant and Plaintiffs' claim against Galindo in Count II is dismissed, pursuant the July 26, 2023 order.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, August 28, 2023.



/s/ Leslie E. Kobayashi  
Leslie E. Kobayashi  
United States District Judge

**EVAN AULD-SUSOTT, ETC., ET AL. VS. LAURYN GALINDO, ET AL; CV 20-00270 LEK-RT; ORDER DENYING DEFENDANTS' MOTIONS FOR RECONSIDERATION**